

Please enter the following amendments and remarks:

### **STATUS OF THE CLAIMS**

Claims 1-9, 13-22, 24-31, 33, 34, 36, 38-40 and 42-91 are pending in the Application.

Claims 1-9, 13-22, 24-31, 33, 34, 36, 38-40 and 42-91 stand rejected.

Claims 10-13, 23, 32, 35, 37, 41, and 51-88 have been canceled.

Reconsideration of the present Application is respectfully requested.

### **REMARKS**

#### **Amendment After Final**

Entry of this amendment is respectfully requested on the ground that this amendment places the present application in condition for allowance. Alternatively, entry of this amendment is respectfully requested on the ground that this amendment places the claims in better form and condition for appeal. Furthermore, Applicant submits that any changes made to the claims herein do not require an additional search on the part of the Office, nor do any amendments made herein raise new issues with regard to the patentability of the claims now pending.

#### **Rejections**

Applicant acknowledges with appreciation that the objections to Claims 51, 57, and 64 have been withdrawn. Claim 13 is objected to because of informalities. Claim 13 has been canceled.

Applicant acknowledges with appreciation that the rejections under 35 U.S.C. § 101 of Claims 45, 46, 84, and 85 have been withdrawn. Claims 79-84 and 86-87 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Rosenblum (U.S. Patent No. 6,529,801, Rosenblum”). Applicant respectfully submits that Claims 79-84 and 86-87 have been canceled, and thus this

rejection is no longer at issue. Claims 51-78, 85, and 88 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Rosenblum in view of <http://www.ncvhs.gov/970416w2.htm> (“NCVHS”). Applicant respectfully submits that Claims 51-78, 85, and 88 have been canceled, and thus this rejection is no longer at issue.

Claims 1-2, 9, 14-21, 24-27, 29-31, 33-34, 36, 38-40, 42-50, and 90 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz et al. (U.S. Patent No. 6,421,650, “Goetz”) in view of Lion (U.S. Patent No. 6,330,491, “Lion”). Claims 3-8, 22, and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion and further in view of Edelson et al. (U.S. Patent No. 5,737,539, “Edelson”). Claims 89, 13, and 91 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Simcox et al. (U.S. Patent No. 5,992,890, “Simcox”). Applicant traverses these rejections for at least the following reasons.

### **35 U.S.C. § 103(a) Rejections**

Claims 1-2, 9, 14-21, 24-27, 29-31, 33-34, 36, 38-40, 42-50, and 90 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion. Claims 3-8, 22, and 28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion and further in view of Edelson. Claims 89, 13, and 91 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Simcox.

35 U.S.C. § 103(a) recites:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To establish obviousness, the scope and content of the prior art must first be determined. Second, the differences between the prior art and the claims at issue must be ascertained. Third, the level of ordinary skill in the relevant art must be determined. Finally, taking this background into consideration, the obviousness of the subject matter is determined. Secondary considerations such as commercial success, long felt but unsolved needs, failure of others, etc., can be utilized to determine the circumstances surrounding the origin of the subject matter sought to be patented. *Graham v. John Deere*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966), M.P.E.P. § 2141.

**a) Goetz and Lion**

Claims 1-2, 9, 14-21, 24-27, 29-31, 33-34, 36, 38-40, 42-50, and 90 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion. Applicant respectfully disagrees for at least the following reasons.

1) Claims 1-2, 9, 14-21, 24-27, 29-31, 33-34, 38-40, 42-50, and 90

Independent Claims 1, 20, 25, 38, 45, 47, and 49 all require computer-readable code for transmitting, or the transmission of, an override for a drug use evaluation directly to a prescription processor. The Office Action states that Goetz teaches “transmitting the prescription and override over a network to a prescription processor.” *See, Office Action of January 26, 2007*, at 4, *referring to Office Action of May 4, 2006*, at 6. However, a few sentences later, the Examiner acknowledges that Goetz does not disclose “transmitting the prescription information directly to a prescription processor.” *Id.* Furthermore, nowhere in Goetz is it disclosed that an override is transmitted over a network directly to a prescription

processor. *See, generally*, Goetz. Applicant's invention clearly discloses what is claimed in independent Claims 1, 20, 25, 38, 45, 47, and 49 in Figure 15 and paragraph 67 of the specification, which recites, in part:

...the paper prescription 1500 includes indicia 1502 communicating that the prescriber 112 has overridden a drug use evaluation alert. In the illustrated example, the indicia 1502 communicates that the prescriber 112 has overridden a drug-drug interaction between erythromycin and theophylline. The indicia 1502 need not communicate the specific drug use evaluation alert; the indicia 1502 may simply communicate that the prescriber 112 has overridden a drug use evaluation alert such as "MD Acknowledges: DD" or "MD Acknowledges DUE Alert."...(emphasis added).

Alternatively, Goetz teaches a medication management system that requires a patient component, physician component, and a pharmacist component. *Id.*, abstract; col. 4, lines 22-24. The patient component provides the link between the physician's component and the pharmacist's component. *Id.* at col. 8, lines 59-62. The physician can enter a prescription for a patient by using the physician's component. *Id.* at col. 10, lines 48-50. The prescription is then downloaded to the patient component. *Id.* at col. 11, lines 35-38. "The patient then takes the patient component to the pharmacist who then transfers the patient data from the patient component 104 to the pharmacist's PC component for execution of the prescription." *Id.* at col. 11, lines 40-43. Thus, Goetz does not disclose a direct transmission of any information, let alone an override, to a prescription processor because of the existence of the patient's component.

The deficiencies of Goetz are not remedied by the addition of Lion nor does the present Office Action suggest that they are. The Office Action states that Lion teaches "transmitting the prescription information directly to a prescription processor." *Office Action of January 26, 2007*, at 4, *referring to Office Action of May 4, 2006*, at 8. However, nowhere in Lion is the transmission of an override of a drug use evaluation alert directly to a prescription processor disclosed. *See, generally*, Lion. Furthermore, while Lion may contemplate the receipt by a

pharmacist of a prescription from a physician, the teachings of Lion should not be combined with those of Goetz. One of skill in the art would not be motivated to combine the teachings of Goetz with those of Lion because Goetz requires a patient component. Direct communication between the physician component and pharmacist component would eliminate the function of the patient component, an essential feature of Goetz. Thus, Goetz teaches away from the combination with Lion and, as such, no motivation to combine them exists.

Because Goetz and Lion fail to disclose all the elements of independent Claims 1, 20, 25, 38, 45, 47, and 49 and no motivation exists to combine Goetz and Lion, Goetz and Lion cannot render independent Claims 1, 20, 25, 38, 45, 47, and 49 obvious.

Accordingly, Applicant submits at least independent Claims 1, 20, 25, 38, 45, 47, and 49 of Applicant's invention are allowable. Applicant further submits that each of the dependent claims (Claims 2, 9, 14-19, 21, 24, 26-27, 29-31, 33-34, 39, 40, 42-44, 46, 48, 50, and 90) are similarly distinguishable over the prior art of record, at least by virtue of each Claim's ultimate dependency from the patently distinct base Claims 1, 20, 25, 38, 45, 47, and 49.

## 2) Claim 36

Claim 36 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion. Applicant respectfully disagrees for at least the following reasons.

Independent Claim 36 discloses "a plurality of representations each corresponding to a motive for overriding a drug use evaluation alert." The Office Action states that Goetz teaches this element (*see, Office Action of January 26, 2007, at 4, referring to Office Action of May 4, 2006, at 12*), in that Goetz discloses "a specific caution note would preferably be generated and downloaded to the patient component...describing the interaction." Goetz, col. 16, lines 45-47. While Goetz teaches generating a "caution note," such caution note generation is not equivalent

to representations corresponding to a motive for overriding a drug use evaluation alert. A caution note may warn a patient, prescriber, or physician of a problem whereas motives for overriding an alert are reasons for ignoring an alert. As such and as noted above, a caution note and a reason are not one in the same, and thus, the teachings of Goetz fail to disclose this element of Applicant's invention. *See, generally*, Goetz. Nowhere in Goetz is this element taught.

This deficiency of Goetz is not remedied by the addition of Lion, nor does the present Office Action suggest that it is. The Office Action states that Lion teaches "transmitting the prescription information directly to a prescription processor." *Office Action of January 26, 2007*, at 4, *referring to Office Action of May 4, 2006*, at 12. However, Lion fails to teach the element of a plurality of representations each corresponding to a motive for overriding a drug use evaluation alert. *See, generally*, Lion. Because Goetz and Lion fail to disclose this feature of Claim 36, not all of the elements of Claim 36 are taught. No matter how the cited references are combined, this feature of the claimed invention cannot be found. Thus, Goetz and Lion cannot render independent Claim 36 obvious.

Accordingly, Applicant submits independent Claim 36 of Applicant's invention is allowable.

**b) Goetz, Lion, and Edelson**

Claims 3-8, 22, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion and further in view of Edelson. Applicant respectfully disagrees for at least the following reasons.

1) Claims 3-8, and 28

Independent Claims 1 and 25 disclose the viewing, means for, or creation of a query of whether a user desires to override the drug use evaluation alert. As discussed above, neither Goetz nor Lion disclose this element of Applicant's invention. The deficiencies in the disclosures of Goetz and Lion are not remedied by the addition of Edelson, nor does the present Office Action suggest that they are. Edelson discloses ways that a system may alert a user to potential problems with prescribing medication. *See, generally*, Edelson. Despite these teachings, Edelson fails to disclose the element of a query whether a user desires to override a drug use evaluation. *See, generally*, Edelson. Nowhere in Edelson is this element taught. Because Edelson fails to disclose this feature of Claims 1 and 25, not all of the elements of Claims 1 and 25 are taught. No matter how the cited references are combined, this feature of the claimed invention cannot be found. Thus, Goetz, Lion, and Edelson do not render independent Claims 1 and 25 obvious.

Accordingly, Applicant submits at least independent Claims 1 and 25 of Applicant's invention are allowable. Applicant further submits that each of the dependent claims (Claims 3-8 and 28) are similarly distinguishable over the prior art of record, at least by virtue of each Claim's ultimate dependency from the patently distinct base Claims 1 and 25.

1) Claim 22

Claim 22 has also been rejected under 35 U.S.C. § 103(a) as being unpatentable over Goetz in view of Lion and further in view of Edelson. Applicant respectfully disagrees for at least the following reasons.

Independent Claim 20 discloses "entering...a reason for overriding the drug use evaluation alert." As discussed above, neither Goetz nor Lion discloses this element of Applicant's invention. The deficiencies in the disclosures of Goetz and Lion are not remedied by

the addition of Edelson, nor does the present Office Action suggest that they are. Edelson discloses ways that a system may alert a user to potential problems with prescribing medication. *See, generally*, Edelson. Despite these teachings, Edelson fails to disclose the element of a reason for overriding a drug use evaluation. *See, generally*, Edelson. Nowhere in Edelson is this element taught. Because Edelson fails to disclose this feature of Claim 20, not all of the elements of Claim 20 are taught. No matter how the cited references are combined, this feature of the claimed invention cannot be found. Thus, Goetz, Lion, and Edelson do not render independent Claim 20 obvious.

Accordingly, Applicant submits at least independent Claim 20 of Applicant's invention is allowable. Applicant further submits that dependent Claim 22 is similarly distinguishable over the prior art of record, at least by virtue its ultimate dependency from the patently distinct base Claim 20.

**c) Goetz and Simcox**

Claims 89, 13, and 91 have been rejected under 35 U.S.C. § 103 as being unpatentable over Goetz in view of Simcox. Applicant traverses this rejection for at least the following reasons.

Claims 89 and 91 disclose the creation of a paper prescription printed with a printer in communication with the electronic prescription creation device which contains the override. Claim 13 has been canceled. The Examiner stated that "Goetz does not disclose creating a paper prescription printed with a printer in communication with the electronic prescription creation device." *Office Action of January 26, 2007*, at 4, *referring to Office Action of May 4, 2006*, at 26. The Examiner asserted that Simcox teaches this element in "[t]he host computer system... preferably includes a graphics printer for generating a printed copy of the completed prescription



medium for the patient.” Simcox, col. 5, lines 23-25. However, neither Goetz nor Simcox teach the element of Applicant’s invention that the paper prescription contain the override. Nowhere in Goetz or Simcox is this element disclosed. Thus, Goetz and Simcox fail to teach all of the elements of Applicant’s invention.

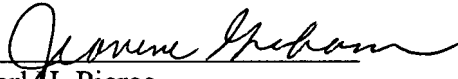
Furthermore, while Simcox may contemplate generating a copy of the completed printed prescription, the teachings of Simcox should not be combined with those of Goetz. One of skill in the art would not be motivated to combine the teachings of Simcox with those of Goetz because Simcox teaches that a completed prescription is printed. There is nothing in Simcox to suggest that the completed prescription would contain an override. Thus, Simcox teaches away from Goetz because Simcox fails to contemplate or even hint that anything but a completed prescription is prepared. Thus, Simcox teaches away from the combination with Goetz and, as such, no motivation to combine them exists. Therefore, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) with respect to claims 89 and 91 be withdrawn.

## CONCLUSION

Applicant respectfully submits that this application now meets the requirements for the issuance of a Notice of Allowance and Applicant respectfully requests the same at the earliest possible time.

Respectfully Submitted,

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